



WAGES

Wages are defined to include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Wages can be paid based on any hourly rate, salary, commission or piece rate. (Labor Code § 200)

COMMISSIONS

State law allows employers to compensate employees, in whole or in part, on a commission basis. (Labor Code § 200) To qualify as commission wages, the employee must be involved in selling a product or service and the commission earnings must be a percentage of the price of the service or product sold. (Labor Code § 204.1; *Keys Motors, Inc., v. DLSE* (1988) 197 Cal.App.3d 557)

Draws against commissions to be earned at a later date are legal only if the draw is equal to at least the minimum wage due the employee for all hours worked in each pay period. The draw may be reconciled against earned commissions at an agreed date or when the commission is earned if there is an express agreement to that effect between the employer and the employee. If no express agreement, the draw will be considered the basic wage in lieu of salary and fix the employee's minimum compensation. (*Agnew v. Cameron* (1967) 247 Cal.App.2d 619)

In general, once commissions have been earned they cannot be forfeited. (*Dana Perfumes v. Mullica* (9th Cir. 1959 268 F.2d 936) However, whether commissions have been earned or forfeited is based on contract interpretation and must be determined on a case-by-case basis. No commissions will be found to be owed an employee where a contract provides that the employee is to receive no commission on accounts where payment is not received until a set number of days (as an example, 30 days) after separation of employment. (*American Software, Inc., v. Ali* (1996) 46 Cal.App.4th 1386) On the other hand, commissions may be found to have been earned and payable to the employee after separation of employment where the contract terms are overly harsh and the employee lacked meaningful choice in the contract negotiations. (*Ellis v. McKinnon Broadcasting Co.* (1993) 18 Cal.App.4th 1796)

Upon termination of employment, an employer must pay the employee at the time of termination all commission wages earned that can be reasonably calculated at the time of termination. (Labor Code § 201) Where an employee voluntarily quits his or her employment without advance notice, all commission wages that can be reasonably calculated at the time must be paid to the employee within 72 hours of termination of the employment relationship. (Labor Code § 202)

BONUSES

A bonus is compensation promised to be paid to an employee in addition to the employees' regular salary. (*Duffy Brothers v. Bing & Bing* (1939) 217 App.Div. 10, 215, N.Y.S. 755) In general, an employee who voluntarily quits his or her employment before the pay-out date of the bonus is not entitled to receive the bonus. (*Lucian v. All State Trucking* (1981) 116 Cal.App.3d 972) Bonuses constitute additional salary, and thus, must be paid in accordance with Labor Code §§ 201 and 202 when an employee is terminated or voluntarily quits his or her employment.

PIECE RATE

Piece rate or piece work is defined as work paid for according to the number of units turned out. *American Heritage Dictionary*. A piece rate must be based upon an ascertainable figure paid for completing a particular task or making a particular piece of goods. The piece rate earned must equal or exceed the State's minimum wage rate for all hours worked. (See appropriate IWC Order and Minimum Wage Order)

REPORTING TO WORK PAY

When an employee reports to work at his or her regularly scheduled time, but the employer finds it necessary to send the employee home because there is no work, the employee must be paid for at least half of the hours scheduled to work, but in no case, less than 2 hours nor more than 4 hours at the employee's regular rate of pay. If an employee reports for work a second time in any one workday and is furnished less than 2 hours of work, the employee shall be paid for 2 hours at the employee's regular rate of pay. These reporting pay requirements do not apply when: (1) the work is interrupted due to an Act of God or other cause not within the employer's control; (2) operations of the employer's business cannot commence or continue due to threats to employees or property or upon advice of civil authorities; or (3) public utilities fail. (Industrial Welfare Commission Orders, § 5)